

AMENDED IN SENATE JUNE 10, 2010

AMENDED IN ASSEMBLY APRIL 15, 2010

AMENDED IN ASSEMBLY APRIL 7, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1894**

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**Introduced by Assembly Member Monning**

February 16, 2010

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An act to amend Section 170.6 of the Code of Civil Procedure, and to amend Section 68616 of the Government Code, relating to judges.

LEGISLATIVE COUNSEL'S DIGEST

AB 1894, as amended, Monning. Judges: disqualification.

Existing law authorizes a party or attorney in an action or proceeding to move to disqualify a judge, court commissioner, or referee for prejudice against a party or attorney or the interest of a party or attorney, as specified. Prejudice may be established by an oral or written motion without notice supported by affidavit or declaration under penalty of perjury, or an oral statement under oath, that the judge, court commissioner, or referee is prejudiced against a party or attorney, or the interest of the party or attorney, so that the party or attorney cannot, or believes that he or she cannot, have a fair and impartial trial or hearing. Existing law specifies the period during which the motion is required to be made for specified trials and hearings, including, for the trial of a cause that has been assigned to a judge for all purposes, the motion shall be made to the assigned judge or to the presiding judge by a party within 10 days after notice of the all purpose assignment, or if the party has not yet appeared in the action, then within 10 days after the appearance.

This bill would extend the time period for making the motion in the trial of a civil cause that has been assigned to a judge for all purposes from the 10-day period described above to a 15-day period. The bill would require a party to a civil action making a motion pursuant to these provisions to serve notice on all parties ~~within 5 days of~~ *no later than 5 days after* making the motion. The bill would make other technical and conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 170.6 of the Code of Civil Procedure is  
2     amended to read:  
3     170.6. (a) (1) A judge, court commissioner, or referee of a  
4     superior court of the State of California shall not try a civil or  
5     criminal action or special proceeding of any kind or character nor  
6     hear any matter therein that involves a contested issue of law or  
7     fact when it is established as provided in this section that the judge  
8     or court commissioner is prejudiced against a party or attorney or  
9     the interest of a party or attorney appearing in the action or  
10    proceeding.  
11    (2) A party to, or an attorney appearing in, an action or  
12    proceeding may establish this prejudice by an oral or written  
13    motion without prior notice supported by affidavit or declaration  
14    under penalty of perjury, or an oral statement under oath, that the  
15    judge, court commissioner, or referee before whom the action or  
16    proceeding is pending, or to whom it is assigned, is prejudiced  
17    against a party or attorney, or the interest of the party or attorney,  
18    so that the party or attorney cannot, or believes that he or she  
19    cannot, have a fair and impartial trial or hearing before the judge,  
20    court commissioner, or referee. If the judge, other than a judge  
21    assigned to the case for all purposes, court commissioner, or referee  
22    assigned to, or who is scheduled to try, the cause or hear the matter  
23    is known at least 10 days before the date set for trial or hearing,  
24    the motion shall be made at least 5 days before that date. If directed  
25    to the trial of a cause with a master calendar, the motion shall be  
26    made to the judge supervising the master calendar not later than  
27    the time the cause is assigned for trial. If directed to the trial of a  
28    criminal cause that has been assigned to a judge for all purposes,

1 the motion shall be made to the assigned judge or to the presiding  
2 judge by a party within 10 days after notice of the all purpose  
3 assignment, or if the party has not yet appeared in the action, then  
4 within 10 days after the appearance. If directed to the trial of a  
5 civil cause that has been assigned to a judge for all purposes, the  
6 motion shall be made to the assigned judge or to the presiding  
7 judge by a party within 15 days after notice of the all purpose  
8 assignment, or if the party has not yet appeared in the action, then  
9 within 15 days after the appearance. If the court in which the action  
10 is pending is authorized to have no more than one judge, and the  
11 motion claims that the duly elected or appointed judge of that court  
12 is prejudiced, the motion shall be made before the expiration of  
13 30 days from the date of the first appearance in the action of the  
14 party who is making the motion or whose attorney is making the  
15 motion. In no event shall a judge, court commissioner, or referee  
16 entertain the motion if it is made after the drawing of the name of  
17 the first juror, or if there is no jury, after the making of an opening  
18 statement by counsel for plaintiff, or if there is no opening  
19 statement by counsel for plaintiff, then after swearing in the first  
20 witness or the giving of any evidence or after trial of the cause has  
21 otherwise commenced. If the motion is directed to a hearing, other  
22 than the trial of a cause, the motion shall be made not later than  
23 the commencement of the hearing. In the case of trials or hearings  
24 not specifically provided for in this paragraph, the procedure  
25 specified herein shall be followed as nearly as possible. The fact  
26 that a judge, court commissioner, or referee has presided at, or  
27 acted in connection with, a pretrial conference or other hearing,  
28 proceeding, or motion prior to trial, and not involving a  
29 determination of contested fact issues relating to the merits, shall  
30 not preclude the later making of the motion provided for in this  
31 paragraph at the time and in the manner herein provided.

32 A motion under this paragraph may be made following reversal  
33 on appeal of a trial court's decision, or following reversal on appeal  
34 of a trial court's final judgment, if the trial judge in the prior  
35 proceeding is assigned to conduct a new trial on the matter.  
36 Notwithstanding paragraph (4), the party who filed the appeal that  
37 resulted in the reversal of a final judgment of a trial court may  
38 make a motion under this section regardless of whether that party  
39 or side has previously done so. The motion shall be made within

1 60 days after the party or the party's attorney has been notified of  
2 the assignment.

3 (3) A party to a civil action making that motion under this  
4 section shall serve notice on all parties ~~within five days of~~ *no later*  
5 *than five days after* making the motion.

6 (4) If the motion is duly presented, and the affidavit or  
7 declaration under penalty of perjury is duly filed or an oral  
8 statement under oath is duly made, thereupon and without any  
9 further act or proof, the judge supervising the master calendar, if  
10 any, shall assign some other judge, court commissioner, or referee  
11 to try the cause or hear the matter. In other cases, the trial of the  
12 cause or the hearing of the matter shall be assigned or transferred  
13 to another judge, court commissioner, or referee of the court in  
14 which the trial or matter is pending or, if there is no other judge,  
15 court commissioner, or referee of the court in which the trial or  
16 matter is pending, the Chair of the Judicial Council shall assign  
17 some other judge, court commissioner, or referee to try the cause  
18 or hear the matter as promptly as possible. Except as provided in  
19 this section, no party or attorney shall be permitted to make more  
20 than one such motion in any one action or special proceeding  
21 pursuant to this section. In actions or special proceedings where  
22 there may be more than one plaintiff or similar party or more than  
23 one defendant or similar party appearing in the action or special  
24 proceeding, only one motion for each side may be made in any  
25 one action or special proceeding.

26 (5) Unless required for the convenience of the court or unless  
27 good cause is shown, a continuance of the trial or hearing shall  
28 not be granted by reason of the making of a motion under this  
29 section. If a continuance is granted, the cause or matter shall be  
30 continued from day to day or for other limited periods upon the  
31 trial or other calendar and shall be reassigned or transferred for  
32 trial or hearing as promptly as possible.

33 (6) Any affidavit filed pursuant to this section shall be in  
34 substantially the following form:

35  
36 (Here set forth court and cause)

37 ~~State of California,~~                    ~~+~~ ss. ~~PEREMPTORY CHALLENGE~~  
38 ~~State of California,~~                    ss. ~~PEREMPTORY CHALLENGE~~  
39 County of \_\_\_\_\_  
40

\_\_\_\_\_, being duly sworn, deposes and says: That he or she is a party (or attorney for a party) to the within action (or special proceeding). That \_\_\_\_\_ the judge, court commissioner, or referee before whom the trial of the (or a hearing in the) action (or special proceeding) is pending (or to whom it is assigned) is prejudiced against the party (or his or her attorney) or the interest of the party (or his or her attorney) so that affiant cannot or believes that he or she cannot have a fair and impartial trial or hearing before the judge, court commissioner, or referee.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.  
(Clerk or notary public or other officer administering oath)

(7) Any oral statement under oath or declaration under penalty of perjury made pursuant to this section shall include substantially the same contents as the affidavit above.

(b) Nothing in this section shall affect or limit Section 170 or Title 4 (commencing with Section 392) of Part 2, and this section shall be construed as cumulative thereto.

(c) If any provision of this section or the application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application and, to this end, the provisions of this section are declared to be severable.

SEC. 2. Section 68616 of the Government Code is amended to read:

68616. Delay reduction rules shall not require shorter time periods than as follows:

(a) Service of the complaint within 60 days after filing. Exceptions, for longer periods of time, (1) may be granted as authorized by local rule, and (2) shall be granted on a showing that service could not reasonably be achieved within the time required with the exercise of due diligence, consistent with the amount in controversy.

(b) Service of responsive pleadings within 30 days after service of the complaint. The parties may stipulate to an additional 15 days. Exceptions, for longer periods of time, may be granted as authorized by local rule.

(c) Time for service of notice or other paper under Sections 1005 and 1013 of the Code of Civil Procedure, and time to plead after service of summons under Section 412.20 of the Code of Civil Procedure, shall not be shortened, except as provided in those sections.

(d) Within 30 days of service of the responsive pleadings, the parties may, by stipulation filed with the court, agree to a single continuance not to exceed 30 days.

It is the intent of the Legislature that these stipulations not detract from the efforts of the courts to comply with standards of timely disposition. To this extent, the Judicial Council shall develop statistics that distinguish between cases involving, and not involving, these stipulations.

(e) A status conference, or similar event, other than a challenge to the jurisdiction of the court, shall not be required to be conducted sooner than 30 days after service of the first responsive pleadings, or 30 days after expiration of a stipulated continuance, if any, pursuant to subdivision (d).

(f) Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure shall govern discovery, except in arbitration proceedings.

(g) A case shall not be referred to arbitration prior to 210 days after the filing of the complaint, exclusive of the stipulated period provided for in subdivision (d). Any rule adopted pursuant to this article shall not contravene Sections 638 and 639 of the Code of Civil Procedure.

(h) Unnamed (DOE) defendants shall not be dismissed or severed prior to the conclusion of the introduction of evidence at trial, except upon stipulation or motion of the parties.

CORRECTIONS:

Text—Pages 4, 5, and 6.